

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1990**

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**Introduced by Assembly Member Gordon**

February 20, 2014

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An act to amend Section 113789 of, to amend the heading of Chapter 12.5 (commencing with Section 114375) of Part 7 of Division 104 of, and to add Sections 113752, 113796, 114376, and 114376.5 to, the Health and Safety Code, relating to community food production.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1990, as amended, Gordon. Community food production.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities and provides for the enforcement of those standards by local health agencies and by the State Department of Public Health, as specified. The code requires farm stands, as defined, to comply with specified requirements governing food safety and sanitation. A violation of the code is a crime.

This bill would authorize, except under a specified circumstance, a community food producer or a gleaner, as defined, to sell or provide whole uncut fruits or vegetables, or unrefrigerated shell eggs, directly to the public or to a permitted restaurant if the community food producer meets specified requirements, including that the produce is labeled with the name and address of the community food producer, *and that the community food producer registers with the local city or county health enforcement office*. The bill would also authorize an enforcement officer to enter into and inspect the operations of a community food producer

in response to a food safety recall or food safety complaint. The bill would authorize an enforcement officer to issue a cease and desist order for violations of these provisions, which would prohibit the community food producer from further sales until the operations of the community food producer are reinspected and cleared by the enforcement officer's agency. The bill would also authorize the enforcement officer to recover reasonable costs associated with an inspection from the community food producer.

Because the bill would create new crimes and would impose additional duties on local food inspectors, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 113752 is added to the Health and Safety
- 2 Code, to read:
- 3 113752. "Community food producer" means a producer of
- 4 agricultural products on land that is not zoned for agricultural use
- 5 but is otherwise in compliance with applicable local land use and
- 6 zoning restrictions, including, but not limited to, restrictions
- 7 governing personal gardens, community gardens, school gardens,
- 8 and culinary gardens.
- 9 SEC. 2. Section 113789 of the Health and Safety Code is
- 10 amended to read:
- 11 113789. (a) "Food facility" means an operation that stores,
- 12 prepares, packages, serves, vends, or otherwise provides food for
- 13 human consumption at the retail level, including, but not limited
- 14 to, the following:

1 (1) An operation where food is consumed on or off the premises,  
2 regardless of whether there is a charge for the food.

3 (2) Any place used in conjunction with the operations described  
4 in this subdivision, including, but not limited to, storage facilities  
5 for food-related utensils, equipment, and materials.

6 (b) "Food facility" includes permanent and nonpermanent food  
7 facilities, including, but not limited to, the following:

8 (1) Public and private school cafeterias.

9 (2) Restricted food service facilities.

10 (3) Licensed health care facilities, except as provided in  
11 paragraph (13) of subdivision (c).

12 (4) Commissaries.

13 (5) Mobile food facilities.

14 (6) Mobile support units.

15 (7) Temporary food facilities.

16 (8) Vending machines.

17 (9) Certified farmers' markets, for purposes of permitting and  
18 enforcement pursuant to Section 114370.

19 (10) Farm stands, for purposes of permitting and enforcement  
20 pursuant to Section 114375.

21 (c) "Food facility" does not include any of the following:

22 (1) A cooperative arrangement wherein no permanent facilities  
23 are used for storing or handling food.

24 (2) A private home, including a cottage food operation that is  
25 registered or has a permit pursuant to Section 114365.

26 (3) A church, private club, or other nonprofit association that  
27 gives or sells food to its members and guests, and not to the general  
28 public, at an event that occurs not more than three days in any  
29 90-day period.

30 (4) A for-profit entity that gives or sells food at an event that  
31 occurs not more than three days in a 90-day period for the benefit  
32 of a nonprofit association, if the for-profit entity receives no  
33 monetary benefit, other than that resulting from recognition from  
34 participating in an event.

35 (5) Premises set aside for wine tasting, as that term is used in  
36 Section 23356.1 of the Business and Professions Code and in the  
37 regulations adopted pursuant to that section, that comply with  
38 Section 118375, regardless of whether there is a charge for the  
39 wine tasting, if no other beverage, except for bottles of wine and  
40 prepackaged nonpotentially hazardous beverages, is offered for

1 sale for onsite consumption and no food, except for crackers, is  
2 served.

3 (6) Premises operated by a producer, selling or offering for sale  
4 only whole produce grown by the producer, or shell eggs, or both,  
5 provided the sales are conducted on premises controlled by the  
6 producer.

7 (7) A commercial food processing plant as defined in Section  
8 111955.

9 (8) A child day care facility, as defined in Section 1596.750.

10 (9) A community care facility, as defined in Section 1502.

11 (10) A residential care facility for the elderly, as defined in  
12 Section 1569.2.

13 (11) A residential care facility for the chronically ill, which has  
14 the same meaning as a residential care facility, as defined in Section  
15 1568.01.

16 (12) Premises set aside by a beer manufacturer, as defined in  
17 Section 25000.2 of the Business and Professions Code, that comply  
18 with Section 118375, for the purposes of beer tasting, regardless  
19 of whether there is a charge for the beer tasting, if no other  
20 beverage, except for beer and prepackaged nonpotentially  
21 hazardous beverages, is offered for sale for onsite consumption,  
22 and no food, except for crackers or pretzels, is served.

23 (13) (A) An intermediate care facility for the developmentally  
24 disabled, as defined in subdivisions (e), (h), and (m) of Section  
25 1250, with a capacity of six beds or fewer.

26 (B) A facility described in subparagraph (A) shall report any  
27 foodborne illness or outbreak to the local health department and  
28 to the State Department of Public Health within 24 hours of the  
29 illness or outbreak.

30 (14) A community food producer, as defined in Section 113752.

31 SEC. 3. Section 113796 is added to the Health and Safety Code,  
32 to read:

33 113796. "Gleaner" means a person who legally gathers  
34 remnants of an agricultural crop or harvests part of, or all of, an  
35 agricultural crop made available by the owner of the agricultural  
36 crop.

37 SEC. 4. The heading of Chapter 12.5 (commencing with  
38 Section 114375) of Part 7 of Division 104 of the Health and Safety  
39 Code is amended to read:

CHAPTER 12.5. FARM STANDS AND COMMUNITY FOOD  
PRODUCTION

SEC. 5. Section 114376 is added to the Health and Safety Code, to read:

114376. Unless a local jurisdiction adopts an ordinance regulating community food production or agricultural production that prohibits the activity, a community food producer or gleaner may sell or provide whole uncut fruits or vegetables, or unrefrigerated shell eggs, directly to the public, to a permitted restaurant, or a cottage food operation if the community food producer meets all of the following requirements:

(a) Agricultural products shall be grown or produced in compliance with subdivision (b) of Section 113735.

(b) Agricultural products shall be labeled with the name and address of the community food producer.

(c) Conspicuous signage shall be provided in lieu of a product label if the agricultural product is being sold by the community food producer on the site of production. *The signage shall include, but not be limited to, the name and address of the community food producer.*

(d) *Registration with the local city or county health enforcement office, including, but not limited to, the name, address, and phone number of the community food producer, shall be required.*

SEC. 6. Section 114376.5 is added to the Health and Safety Code, to read:

114376.5. (a) An enforcement officer, as defined in Section 113774, may enter into and inspect the operations of a community food producer in response to a food safety recall or food safety complaint. The enforcement officer may recover reasonable costs associated with an inspection from the community food producer.

(b) (1) An enforcement ~~offer~~ officer may issue a community food producer a cease and desist order for violations of Section 114376, upon which the community food producer shall be prohibited from further sales until the operations of the community food producer have been reinspected and cleared by the enforcement officer's agency.

(2) At any time within 15 calendar days after issuance of the cease and desist order, the community food producer may request in writing a hearing before a hearing officer to show cause why

1 the prohibition of further sales is not warranted. The hearing shall  
2 be held within 15 calendar days of the receipt of a request for a  
3 hearing. A failure to request a hearing within 15 calendar days  
4 shall be deemed a waiver of the right to a hearing.

5 (c) Violations of Section 114376 shall be subject to the penalties  
6 specified in Section 114395.

7 SEC. 7. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution for certain  
9 costs that may be incurred by a local agency or school district  
10 because, in that regard, this act creates a new crime or infraction,  
11 eliminates a crime or infraction, or changes the penalty for a crime  
12 or infraction, within the meaning of Section 17556 of the  
13 Government Code, or changes the definition of a crime within the  
14 meaning of Section 6 of Article XIII B of the California  
15 Constitution.

16 However, if the Commission on State Mandates determines that  
17 this act contains other costs mandated by the state, reimbursement  
18 to local agencies and school districts for those costs shall be made  
19 pursuant to Part 7 (commencing with Section 17500) of Division  
20 4 of Title 2 of the Government Code.